

**WORKERS'
COMPENSATION LAW**

CAROLINA ACADEMIC PRESS
Context and Practice Series
Michael Hunter Schwartz
Series Editor

Administrative Law
Richard Henry Seamon

Civil Procedure for All States
Benjamin V. Madison, III

Constitutional Law
David S. Schwartz and Lori A. Ringhand

Contracts
Michael Hunter Schwartz and Adrian J. Walters

Current Issues in Constitutional Litigation, Second Edition
Sarah E. Ricks, with co-author by Evelyn M. Tenenbaum

Employment Discrimination, Second Edition
Susan Grover, Sandra F. Sperino, and Jarod S. Gonzalez

Evidence
Pavel Wonsowicz

International Women's Rights, Equality, and Justice
Christine M. Venter

The Lawyer's Practice
Kris Franklin

Professional Responsibility
Barbara Glesner Fines

Sales, Second Edition
Edith R. Warkentine

Workers' Compensation Law, Second Edition
Michael C. Duff

WORKERS'
COMPENSATION LAW
A Context and Practice Casebook

SECOND EDITION

Michael C. Duff
UNIVERSITY OF WYOMING COLLEGE OF LAW



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2017
Michael C. Duff
All Rights Reserved

eBook ISBN 978-1-53100-309-8
ISBN 978-1-5310-0308-1
LCCN 2016960223

Carolina Academic Press, LLC
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

Contents

List of Figures	xi
Table of Principal Cases	xiii
Series Editor's Preface	xv
Preface and Acknowledgments	xvii
Chapter 1 • Introduction to Workers' Compensation	3
Introductory Chapter Problem	3
The Big Picture of Workers' Compensation	3
A. Workers' Compensation Policy	3
1. Doing Nothing	4
2. Using Tort	4
3. Using Insurance	4
B. Overview of the Scope of Workers' Compensation	5
1. Historical Development	5
2. Quid Pro Quo — The Societal “Deal”	6
3. Expansion of “the System”	7
4. Exclusive Remedy	7
<i>O'Rourke v. Long</i>	7
5. Statutory Interpretation	9
<i>Fisher v. Tidewater Building Co.</i>	10
<i>Superior Industries v. Thomaston</i>	11
Chapter Conclusion	13
Chapter 2 • Critical Threshold Considerations: Notice, Statute of Limitations, Attorney's Fees, Date of Injury	15
Introduction	15
A. Return to Ann Smith's Scenario	16
B. Notice	17
Summary of the Law	17
<i>General Cable Corporation v. Levins</i>	18
C. Statute of Limitations	20
Summary of the Law	21
<i>Bieber v. Keeler Brass Company</i>	21
D. Attorney's Fees	24
Summary of the Law	24
<i>Appeal of Metevier</i>	26
<i>Pettinato v. Industrial Commission of Arizona</i>	28
E. Date of Injury	30
<i>Brown v. Industrial Commission of Ohio</i>	31

<i>DeRice v. S.D. Warren Co.</i>	35
Chapter Conclusion	37
Chapter 3 • Causal Connection: Injuries by Accident Arising Out of and In the Course of Employment	41
Introduction	41
A. Injury “by Accident”	42
Summary of the Law	42
<i>Tomlin v. Densberger Drywall Inc.</i>	44
<i>Lane Co., Inc. v. Saunders</i>	48
<i>Ross v. Oxford Paper Co.</i>	50
<i>Stenrich Group v. Jemmott</i>	53
<i>Smith’s Food And Drug, Inc. v. Labor Com’n</i>	58
Exercise 3-1	61
B. “Arising Out of”	62
Summary of the Law	62
1. Initial Causation	64
<i>Smith v. Bob Evans Farms</i>	64
<i>Odd Jobs & More v. Reid</i>	69
<i>Egan’s Case</i>	72
<i>Circle K Store No. 1131 v. Industrial Com’n of Arizona</i>	74
Exercise 3-2	79
2. “Successive” Causation	80
<i>Bryant v. Masters Mach. Co.</i>	81
<i>Brackett v. A.C. Lawrence Leather Co.</i>	89
Exercise 3-3	90
C. “In the Course of”	90
Summary of the Law	91
<i>Dixon v. U.S. Air Reservation Group</i>	92
<i>Strother v. Morrison Cafeteria</i>	98
<i>American Home Assur. Co. v. De Los Santos</i>	102
<i>Cotton v. Bureau of Workers’ Compensation</i>	108
Exercise 3-4	112
<i>Workers’ Compensation Div. v. Espinoza</i>	113
Exercise 3-5	115
Chapter 4 • Extent of Incapacity	117
Introduction	117
Determination of the Extent, Duration, and Benefit Level of Work-Related Injuries	118
A. Total versus Partial Incapacity	121
1. Basic Determination of <i>Permanent Total</i> Incapacity	121
<i>Blue Bell, Inc. v. Nichols</i>	122
<i>Southeastern Commercial Printing Corp. v. Sallas</i>	124
2. <i>Temporary Total</i> Incapacity	127
<i>Wood v. Fletcher Allen Health Care</i>	128
3. Fluctuating Levels of Incapacity	132
<i>Matthew Ormonde, Employee; Choice One Communications, Employer; Federal Insurance Company, Insurer</i>	132
<i>Bonnie Kobe, Petitioner v. Montana State Fund, Respondent/Insurer</i>	137

Exercise 4-1	140
B. Calculation of Partial Incapacity Benefits	140
<i>Fecteau v. Rich Vale Const., Inc.</i>	141
<i>Pro-Football, Inc. v. District Of Columbia Dept. Of Employment Services</i>	146
Exercise 4-2	156
C. Average Weekly Wage	156
<i>St. Mary's Church & Mission v. Industrial Com'n of State of Colo.</i>	157
<i>John Driggs Co., Inc. v. Somers</i>	160
D. Interplay between Permanent Partial Incapacity, Permanent Impairment, and Vocational Rehabilitation	162
<i>Stacy v. Great Lakes Agri Marketing, Inc.</i>	164
Exercise 4-3	173
E. Odd Lot Doctrine & Work Search	173
<i>Moss v. Wyoming Workers' Safety and Compensation Division</i>	175
<i>Avramovic v. R.C. Moore Transp., Inc.</i>	184
Exercise 4-4	190
F. Lump Sum Settlement	190
<i>Moilanen v. Marbles Moving & Storage</i>	192
<i>Valles v. Daniel Const. Co.</i>	193
<i>Ex Parte Ford</i>	194
Exercise 4-5	196
Chapter 5 • What Is Employment? Who Is an Employee? What Is an Employer?	199
Introduction	199
A. What Is Employment?	200
<i>Blache v. Maryland Cas. Co.</i>	201
Exercise 5-1	202
B. Who Is an Employee?	203
1. Preliminary Considerations	203
2. Common Law Right to Control Test	203
<i>McCown v. Hines</i>	206
Exercise 5-2	210
3. Economic Realities Test	210
<i>Tata v. Benjamin Muskovitz Plumbing and Heating</i>	211
<i>Powell v. Appeal Bd. of Mich. Employment Sec. Commission</i>	213
<i>N.L.R.B. v. Hearst Publications</i>	218
Exercise 5-3	221
4. Relative Nature of the Work Test	221
<i>Kertesz v. Korsh</i>	223
Exercise 5-4	227
C. What Is an Employer?	228
<i>JFC Temps, Inc. v. W.C.A.B. (Lindsay)</i>	229
<i>Samaoya v. Gallagher</i>	232
Exercise 5-4	236
Chapter 6 • Evidence	239
Introduction	239
A. Lay Testimony	241

<i>Graves v. W.C.A.B. (Philadelphia Housing Authority)</i>	242
<i>Kloepfer v. Lumbermen's Mut. Cas. Co.</i>	246
<i>Bell's Repair Service v. W.C.A.B. (Murphy Jr.)</i>	248
<i>Broach v. Midland Steel Products Co.</i>	253
Exercise 6-1	255
B. Physicians' Testimony	255
<i>Dunn v. Treasurer of Missouri as Custodian of Second Injury Fund</i>	257
<i>Laskey v. S.D. Warren Co.</i>	264
<i>City of Manassa v. Ruff</i>	270
<i>Claim of Decker v. Wyoming Medical Com'n</i>	276
<i>Michau v. Georgetown County</i>	280
<i>Amos v. Gartner, Inc.</i>	283
Exercise 6-2	287
Exercise 6-3	287
C. Admissibility of Documents	288
<i>Hert v. J.J. Newberry Co.</i>	289
<i>Gunter v. Fischer Scientific American</i>	293
Exercise 6-4	295
Chapter 7 • Death Benefits	297
Introduction	297
A. Classification of Eligible Dependents	298
Summary of the Law	298
<i>Houser by Houser v. Dan Dugan Transport Co.</i>	299
<i>Adams v. Texfi Industries</i>	302
B. Definition of Dependency	304
Summary of the Law	305
<i>Johnson v. West Virginia Office of Insurance Commissioner</i>	306
Exercise 7-1	310
C. Calculation of Death Benefit	311
Summary of the Law	311
<i>Johnson v. Covil Corp.</i>	312
<i>Richards v. St. Bernard Parish Government</i>	316
Exercise 7-2	321
Chapter 8 • Exclusive Remedy, Third Party Actions, Employer/Worker Misconduct	323
Introduction	323
A. Exclusive Remedy Rule	326
Summary of the Law	326
<i>Walters v. Flathead Concrete Products, Inc.</i>	327
<i>Fanion v. McNeal</i>	335
<i>Alexander v. Bozeman Motors, Inc.</i>	339
<i>Legault v. Brown</i>	345
Exercise 8-1	347
Exercise 8-2	347
B. Third Party Action	347
Summary of the Law	347
<i>Massachusetts General Laws c.152 § 15</i>	348

<i>Firestone Tire and Rubber Co. v. Brown</i>	349
<i>Piper v. Pettibone Corp.</i>	352
Exercise 8-3	356
Exercise 8-4	356
C. Employer Misconduct	356
<i>Bigge Crane & Rigging Co. v. Workers' Comp. Appeals Bd.</i>	357
<i>Hawkeye Const. Co. v. Little ex rel. Little</i>	364
<i>Michael Lynch, Employee; Oak Roofing and Sheet Metal</i> <i>Works Co., Inc., Employer; Continental Casualty Insurance</i> <i>Company, Insurer</i>	367
Exercise 8-5	370
D. Worker Misconduct	371
<i>Barron v. Labor Commission</i>	372
<i>Garcia v. Naylor Concrete Co.</i>	378
<i>Pearson v. Johnson Controls, Northern N.M., LLC</i>	381
<i>Franks v. Workers' Compensation Appeals Board</i>	387
Exercise 8-6	388
Chapter 9 • Administration	391
Introduction	391
A. Administration: Generally	391
B. Administration: Massachusetts	393
1. Before Injury	393
2. Pre-Dispute Process	393
3. Post-Dispute Process	394
<i>Nolan v. Commissioner of Department of Industrial Accidents</i>	395
<i>Mark Cerasoli, Employee; Hale Development, Employer;</i> <i>Liberty Mutual Insurance Co., Insurer</i>	399
4. Notice and Statute of Limitations	403
<i>Berthiaume's Case</i>	404
<i>Thibeault's Case</i>	408
Exercise 9-1	410
C. Administration and Judicial Review: Massachusetts	410
1. Judicial Review of Agency Fact Finding	411
<i>Griffin's Case</i>	412
<i>Case of Lettich</i>	414
2. Judicial Review of Agency Statutory and Regulatory Interpretations	417
<i>Case of Gonzalez</i>	418
<i>Case of Gateley</i>	421
Exercise 9-2	422
Chapter 10 • Workers' Compensation and Other Statutes	431
Introduction	431
A. Social Security Act	431
1. Disability Determinations	431
2. SSDI Benefit Coordination	434
3. Retirement Presumption	436
B. Family and Medical Leave Act	436
1. Description	436

2. Potential Interaction with Workers' Compensation	437
C. Americans with Disabilities Act	438
1. Description	438
2. Potential Interaction with Workers' Compensation	439
D. Immigration Statutes	443
<i>Hoffman Plastic Compounds, Inc. v. N.L.R.B.</i>	444
<i>Amoah v. Mallah Management, LLC</i>	446
E. Employee Retirement and Income Security Act of 1974 (ERISA)	448
<i>Ciampi v. Hannaford Bros. Co.</i>	449
F. Federal Workplace Injury Programs	452
1. Energy Employees Occupational Illness Compensation Program	453
2. Federal Employees' Compensation Program	453
3. Longshore and Harbor Workers' Compensation Program	453
4. Black Lung Benefits Program	453
Chapter 11 · Emerging Tensions in the Workers' Compensation Model: Benefit Adequacy, Opt-Out & ERISA Conflict	455
A. Benefit Adequacy	455
1. Introduction	455
2. 1972 Report of the National Commission on Workers' Compensation Laws and Subsequent Analyses of "Adequacy"	456
3. Developing Case Law	457
<i>Westphal v. City of St. Petersburg</i>	458
B. The Opt-Out Phenomenon	464
<i>Coates v. Fallin</i>	466
C. Opt-Out (or other Alternatives to Workers' Compensation) and ERISA	474
Chapter 12 · In the Law Office	477
Exercise 12-1 Exercise Case Materials	478
Exercise 12-2 Exercise Case Materials	479
Exercise 12-3 Exercise Case Materials	510
Exercise 12-4 Exercise Case Materials	553
Index	557

List of Figures

Figure 2.1 • Critical Threshold Considerations for Workers' Compensation Claims	39
Figure 3.1 • Causal Connection in Workers' Compensation	116
Figure 4.1 • Extent of Incapacity in Workers' Compensation	197

Table of Principal Cases

- Adams v. Texfi Industries, 302
Alexander v. Bozeman Motors, 339
American Home v. De Los Santos, 102
Amoah v. Mallah Management, 446
Amos v. Gartner, Inc., 283
Avramovic v. R.C. Moore Transp., 184
- Barron v. Labor Commission, 372
Bell's Repair Service v. W.C.A.B. (Murphy Jr.), 248
Berthiaume's Case, 404
Bieber v. Keeler Brass Company, 21
Bigge Crane & Rigging Co. v. Workers' Comp. Appeals Bd., 357
Blache v. Maryland Cas. Co., 201
Blue Bell, Inc. v. Nichols, 122
Brackett v. A.C. Lawrence Leather Co., 89
Broach v. Midland Steel Products Co., 253
Brown v. Industrial Commission of Ohio, 31
Bryant v. Masters Mach. Co., 81
- Mark Cerasoli, Hale Development, Liberty Mutual Insurance Co., 399
Ciampi v. Hannaford Bros. Co., 449
Circle K Store No. 1131 v. Industrial Com'n of Arizona, 74
Coates v. Fallin, 466
Cotton v. Bureau of Workers' Compensation, 108
- Claim of Decker v. Wyoming Medical Com'n, 276
DeRice v. S.D. Warren Co., 35
Dixon v. U.S. Air Reservation Group, 92
John Driggs Co., Inc. v. Somers, 160
- Dunn v. Treasurer of Missouri, 257
Egan's Case, 72
Fanion v. McNeal, 335
Fecteau v. Rich Vale Const., 141
Firestone Tire and Rubber Co. v. Brown, 349
Fisher v. Tidewater Building Co., 10
Ex Parte Ford, 194
Franks v. Workers' Compensation Appeals Board, 387
- Garcia v. Naylor Concrete Co., 378
Case of Gateley, 421
General Cable Corporation v. Levins, 18
Case of Gonzalez, 418
Graves v. W.C.A.B. (Philadelphia Housing Authority), 242
Griffin's Case, 412
Gunter v. Fischer Scientific American, 293
- Hawkeye Const. Co. v. Little, 364
Hert v. J. J. Newberry Co., 289
Hoffman Plastic Compounds, Inc. v. N.L.R.B., 444
Houser by Houser v. Dan Dugan Transport Co., 299
- JFC Temps, Inc. v. W.C.A.B. (Lindsay), 229
Johnson v. Covil Corp., 312
Johnson v. West Virginia Office of Insurance Commissioner, 306
- Kertesz v. Korsh, 223
Kloepfer v. Lumbermen's Mut. Cas. Co., 246

- Bonnie Kobe v. Montana State Fund, Respondent/Insurer, 137
- Lane Co., Inc. v. Saunders, 48
- Laskey v. S.D. Warren Co., 264
- Legault v. Brown, 345
- Case of Lettich, 414
- City Of Manassa v. Ruff, 270
- McCown v. Hines, 206
- Appeal of Metevier, 26
- Michael Lynch, Oak Roofing, Continental Casualty, 367
- Michau v. Georgetown County, 280
- Moilanen v. Marbles Moving & Storage, 192
- Moss v. Wyoming Workers' Safety and Compensation Division, 175
- N.L.R.B. v. Hearst Publications, 218
- Nolan v. Commissioner of Department of Industrial Accidents, 395
- Odd Jobs & More v. Reid, 69
- Matthew Ormonde, Choice One Communications, Federal Insurance Company, 132
- O'Rourke v. Long, 7
- Pearson v. Johnson Controls, Northern N.M., LLC, 381
- Pettinato v. Industrial Commission of Arizona, 28
- Piper v. Pettibone Corp., 352
- Powell v. Appeal Bd. of Mich. Employment Sec. Commission, 213
- Pro-Football, Inc. v. District Of Columbia Dept. Of Employment Services, 146
- Richards v. St. Bernard Parish Government, 316
- Ross v. Oxford Paper Co., 50
- Samaoya v. Gallagher, 232
- Smith v. Bob Evans Farms, 64
- Smith's Food and Drug, Inc. v. Labor Com'n, 58
- Southeastern Commercial Printing Corp. v. Sallas, 124
- St. Mary's Church & Mission v. Industrial Com'n of State of Colo., 157
- Stacy v. Great Lakes Agri Marketing, Inc., 164
- Stenrich Group v. Jemmott, 53
- Strother v. Morrison Cafeteria, 98
- Superior Industries v. Thomaston, 11
- Tata v. Benjamin Muskovitz Plumbing and Heating, 211
- Thibeault's Case, 408
- Tomlin v. Densberger Drywall Inc., 44
- Valles v. Daniel Const. Co., 193
- Walters v. Flathead Concrete Products, Inc., 327
- Westphal v. City of St. Petersburg, 458
- Wood v. Fletcher Allen Health Care, 128
- Workers' Compensation Div. v. Espinoza, 113

Series Editor's Preface

Welcome to a new type of casebook. Designed by leading experts in law school teaching and learning, Context and Practice casebooks assist law professors and their students to work together to learn, minimize stress, and prepare for the rigors and joys of practicing law. Student learning and preparation for law practice are the guiding ethics of these books.

Why would we depart from the tried and true? Why have we abandoned the legal education model by which we were trained? Because legal education can and must improve.

In Spring 2007, the Carnegie Foundation published *Educating Lawyers: Preparation for the Practice of Law* and the Clinical Legal Education Association published *Best Practices for Legal Education*. Both works reflect in-depth efforts to assess the effectiveness of modern legal education, and both conclude that legal education, as presently practiced, falls quite short of what it can and should be. Both works criticize law professors' rigid adherence to a single teaching technique, the inadequacies of law school assessment mechanisms, and the dearth of law school instruction aimed at teaching law practice skills and inculcating professional values. Finally, the authors of both books express concern that legal education may be harming law students. Recent studies show that law students, in comparison to all other graduate students, have the highest levels of depression, anxiety and substance abuse.

The problems with traditional law school instruction begin with the textbooks law teachers use. Law professors cannot implement *Educating Lawyers* and *Best Practices* using texts designed for the traditional model of legal education. Moreover, even though our understanding of how people learn has grown exponentially in the past 100 years, no law school text to date even purports to have been designed with educational research in mind.

The Context and Practice Series is an effort to offer a genuine alternative. Grounded in learning theory and instructional design and written with *Educating Lawyers* and *Best Practices* in mind, Context and Practice casebooks make it easy for law professors to change.

I welcome reactions, criticisms, and suggestions; my e-mail address is michael.schwartz@washburn.edu. Knowing the author(s) of these books, I know they, too, would appreciate your input; we share a common commitment to student learning. In fact, students, if your professor cares enough about your learning to have adopted this book, I bet s/he would welcome your input, too!

Professor Michael Hunter Schwartz, Series Designer and Editor
Co-Director, Institute for Law Teaching and Learning
Associate Dean for Faculty and Academic Development

Preface and Acknowledgments

Unlike the situation existing in many law school courses, there are very few workers' compensation casebooks on the market. Most of the existing "workers' comp" books have been around, in more or less their present form, for some time—for long enough that I was familiar with them when I was a law student more than 15 years ago. When I first engaged in the practice of workers' compensation law, immediately after law school, I was struck by how sharply my work as a practitioner departed from my law school textbook exposure to the subject. Then, when I was privileged to become a law teacher, I began thinking more explicitly about the differences between a body of law as it is taught and the same body of law as it is practiced. This explicit reflection led to deeper ruminations about law school teaching and learning, and about the vague suspicion I had harbored for several years that law student instruction was not all it could be.

I was therefore extremely fortunate, while squarely in the midst of these deliberations, to encounter Professor Michael Hunter Schwartz, a gifted law school teacher and learning theorist, whom I was able to lure to the University of Wyoming College of Law to do an orientation presentation for our entering first year class. Professor Schwartz suggested that I read, without delay, the Carnegie Foundation's *EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW*¹ and Roy Stuckey's *BEST PRACTICES FOR LEGAL EDUCATION*.² I did so, and reading these works validated completely the unease I had been feeling respecting traditional law school teaching. Of particular significance to me were the works' criticisms of the absence of law practice and professional identity formation in legal education, criticisms which I endorse.

Later, I was honored to be asked by Professor Schwartz to join a casebook series that he was organizing that would strive to respond to the teaching and learning research and criticisms underscored by the Carnegie and Stuckey studies. The book you are now reading represents my humble acceptance of that kind invitation.

Workers' Compensation Course Main Objectives

By the end of this course you will at a minimum be able to:

1. Determine whether a potential workers compensation claim is either barred by or made financially infeasible by preliminary procedural considerations.

1. William M. Sullivan, Anne Colby, Judith Welch Wegner, Loyd Bond, & Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

2. Roy Stuckey & Others, *BEST PRACTICES FOR LEGAL EDUCATION* (2007).

2. Determine whether an injury arguably arises out of and in the course of employment.
3. Determine where and how a workers' compensation claim should be filed.
4. Separate credibility from medical case issues, and determine what medical evidence will be required to make out or oppose a claim.
5. Identify, in the case of a deceased worker, dependents of the worker and determine whether they are eligible for death benefits.
6. Determine whether any third party actions are at issue in a case.

Essential Plan of This Text

I have deliberately endeavored to, wherever possible, treat legal issues in the manner and order practitioners—especially small law office practitioners accustomed to representing claimants—would most likely encounter them. Thus, the book does not dwell at length on issues that the practitioner is unlikely to encounter with significant frequency. In this respect the book differs from the scope and treatment of material encountered in other, more traditional workers' compensation casebooks and treatises. I do not, for example, begin the book with unnecessarily arcane questions of who is or is not an employer or an employee. In most cases you are likely to encounter, it will be perfectly clear that injured workers are statutory employees and that their employers are “employers” within the meaning of a relevant workers compensation statute. That is not to say that I omit discussion of the subject. Rather, I defer extended discussion of it until after material I deem to be of more pressing practical concern has been covered.

For instance, of immediate concern to most practitioners is whether a worker has provided prompt notice of a work-related injury to his or her employer, or whether the statutory period for filing a workers' compensation claim has elapsed. Also of critical preliminary importance to practitioners—especially to practitioners representing injured workers—is whether attorney's fees sufficient to support attorney involvement in a prospective claim, are available. If a worker has not provided notice of injury to his or her employer; if the time for filing a worker's claim has elapsed; or if attorney's fees are unavailable, a practitioner will not be able to reach the “substantive” issues of a workers' compensation claim.

For this reason, Chapter 2 of the book quickly takes up the preliminary “procedural” matters of Notice, Statute of Limitations Claim Periods, Attorney's Fees, and determination of the date of a worker's injury. Chapter 3 considers the critical substantive issues of whether an injury is an “accident” that has “arisen out of” and “in the course of” a worker's employment. Analysis of these similar but distinct questions establishes whether a worker's injury is sufficiently connected to employment to be “compensable,” or eligible for compensation under an applicable workers' compensation statute. Chapter 4 discusses how the extent of a worker's incapacity is determined and explains how benefits are calculated. The text does not address problems associated with determining whether an injured worker is a “statutory employee” or whether an employer is a “statutory employer” within the meaning of a relevant workers' compensation law until Chapter 5. Chapter 6 explains whether and how the law of evidence applies in workers' compensation proceedings. Chapter 7 takes up the question of workers' compensation death benefits in contexts in

which a worker has died as a result of a work-related injury. Chapter 8 explores the exclusive remedy rule and how that rule interacts with third party actions and employer or worker fault in bringing about work-related injuries. Chapter 9 then discusses workers' compensation procedure and administration—some of the nuts and bolts of how claims are filed and processed. In Chapter 10, I discuss the interaction between workers' compensation and a few other statutory regimes governing many workplaces: the ADA, Social Security Disability, and ERISA. In Chapter 11, the text considers cutting edge workers' compensation issues like whether benefits are adequate and the lawfulness of proposed new structures for benefit delivery. In the final chapter I expose students to actual practitioners' materials—some depositions and a client intake letter—and pose case problems revealed by the materials.

Because Workers' Compensation is most often encountered by practitioners as state statutory law, as various issues are explored you should always attempt to locate the law of the state in which you are currently planning to practice law.

Acknowledgments

My wife, Victoria, for her seemingly superhuman patience (especially with me).

My children, for being the unparalleled light of my life.

My parents, who never, ever gave up on me. (My late Dad did not live to see me finish the book but his exhortatory voice never left my head.)

My grandfather, George Parker, whose death from black lung disease at age 52 introduced me as a child to the solemnity of workplace justice.

My first legal mentors, Susan Maze-Rothstein and James J. MacAdam, who saw things in me I could not yet see.

Michael Hunter Schwartz, and all the supportive people I have met in connection with this wonderful Carolina Academic Press project.

My law student research assistant for the second edition, Nathan D. Ridgway.

